

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

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5 UNITED STATES OF AMERICA, )  
6 Plaintiff, ) Case No. 1:20CR424  
7 vs. )  
8 MARGARET COLE, )  
9 Defendant. )

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13 TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE  
14 JUDGE JAMES S. GWIN, JUDGE OF SAID COURT,  
15 ON THURSDAY, MAY 19TH, 2022,  
16 COMMENCING AT 10:00 O'CLOCK A.M.

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21 Court Reporter: GEORGE J. STAUDUHAR  
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24 CLEVELAND, OHIO 44113  
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1 APPEARANCES:

2 On behalf of the Government:

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7 and

8 UNITED STATES DEPARTMENT OF JUSTICE  
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13 On behalf of the Defendant:

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P R O C E E D I N G S

THE COURT: We are here today on 20CR-424 United States versus Margaret Cole. The case is here today for sentencing.

In this case, the Court finds the Defendant guilty of Count 11, in which she is charged with conspiring to defraud the United States in violation of 18 United States Code, Section 371.

The Court additionally finds her guilty of Count 13, in which she is charged with having made a false statement to the Polish Central Authority in violation of 42 U.S.C., Section 944.

Ms. Cole, have you received a copy of the presentence report?

THE DEFENDANT: Yes, your Honor.

THE COURT: And have you gone through each paragraph of that report with your attorneys?

THE DEFENDANT: Yes.

THE COURT: After going through the report with your attorneys, do you believe there is any mistakes in the report, or do you raise any objection to any of the report paragraphs?

THE DEFENDANT: No.

THE COURT: And I would note counsel raised

1 certain objections to certain paragraphs, but are there  
2 any additional objections to the report?

3 THE DEFENDANT: I don't know what your  
4 additional --

5 MR. SEARBY: Your Honor, if I might assist,  
6 Ms. Cole would incorporate by reference the objections  
7 that are made and the points made in her sentencing  
8 memorandum, which was filed under seal with the Court and  
9 also with the addendum to the PSR, in the addendum to the  
10 PSR. If the Court would allow it, counsel would make  
11 several points to supplement what's stated there.

12 THE COURT: Have you provided Government  
13 counsel with a copy of the supplemental argument?

14 MR. SEARBY: No, your Honor. I believe it  
15 is subsumed in the arguments between the parties, and it  
16 responds, in part, to certain statements made in the  
17 Government's sentencing memorandum and to items filed by  
18 the Government at approximately 4:00 p.m. yesterday  
19 afternoon.

20 THE COURT: Okay. Well, let's -- the  
21 objections that I'm aware of, we will go through them  
22 sequentially, and you can make argument, and the  
23 Government can respond on those.

24 The first, as much as I can tell, is the  
25 objection to the probation officer's recommendation that

1 there be an offense Guideline addition because it  
2 involved overseas or sophisticated means, which are two  
3 separate acts made by the Government.

4 Let me press the Government to -- on the  
5 second portion of the Government's argument on that and  
6 on the sophisticated means with regard to Ms. Cole's  
7 conduct, is there any -- what's the best argument you  
8 have regarding sophisticated means?

9 MR. MANNING: Yes, your Honor, I can address  
10 that. I will just note primarily that our primary  
11 argument --

12 THE COURT: I understood that.

13 MR. KRAMER: -- on sophisticated means, the  
14 best argument is that the conspiracy was not a garden  
15 variety criminal scheme, that among sophisticated means  
16 employed by the conspirators were a plan to have Cole and  
17 clients change their flights to make sure that they did  
18 not cross state lines with the child.

19 So they would fly directly from Europe into  
20 Texas and then handing off the child with the assistance  
21 of legal documents notarized to effect the transfer of  
22 custody.

23 And before they even got to that situation,  
24 the scheme required the conspirators led by the Defendant  
25 Margaret Cole to press her Poland clients to conceal to

1 Polish authorities that they had this plan in place to  
2 carry out an adoption under foreign law, to obtain visas  
3 through the U.S. Embassy. So this was a complicated  
4 scheme that could only be carried out by an adoption  
5 agency and the person that led it.

6 THE COURT: Help me with understanding:  
7 What's the difference between flying directly to Texas  
8 and/or flying to Utah and putting the child on a plane  
9 from Utah to Texas, how does that become sophisticated?

10 Is there some immigration or other check  
11 that would have been present in Utah that would not  
12 otherwise be present in Texas?

13 MR. MANNING: Had the child crossed state  
14 lines within the United States, it would have created  
15 additional responsibilities to try to complete the  
16 proceedings under Texas state law is our understanding,  
17 and your Honor --

18 THE COURT: If the child had landed in Utah  
19 and immediately switched to separate plane to Texas,  
20 would there have been any state adoption or state custody  
21 proceedings in Utah?

22 MR. MANNING: Yes. I believe that would  
23 have been treated as a different situation because the  
24 child would have been relocated, rehomed to Texas.  
25 Broadly speaking, your Honor, we understand this is not

1 the type of sophisticated means that involves multiple  
2 levels of shell companies or forgeries. It is not  
3 sophisticated means of that nature. Nevertheless, for  
4 the reasons we stated we think it applies and the  
5 substantial conduct overseas, which is the other prong of  
6 that adjustment beyond that --

7 THE COURT: Mr. Searby, do you have any  
8 argument on the sophisticated means position the  
9 Government takes?

10 MR. SEARBY: Briefly, your Honor. Would it  
11 be allowable to the Court that I remove my mask?

12 THE COURT: Yes, as long as you keep some  
13 distance from everybody.

14 MR. SEARBY: Certainly. The counts of  
15 conviction of the Government's indictment is a failure to  
16 disclose, a failure to disclose and transfer the child to  
17 various Government authorities.

18 Remaining silent is not sophisticated, and  
19 we also recited a case involving the rejection by the  
20 Court of Appeals of an enhancement for sophisticated  
21 means in connection with a tax return, and the rejection  
22 by the Court that filing a false tax return amounts to  
23 sophisticated means.

24 In the 302 report of interview of the Poland  
25 client, to my recollection, it is clear that the decision

1 to change flights was a decision made by Poland clients.  
2 There may have been an indication from Ms. Parris they  
3 should do it, but the Court puts its finger on the  
4 illogic of this theory that the child would have crossed  
5 state lines, whether they flew to Utah directly or Texas  
6 and then Utah.

7 In addition, I would note for the Court, as  
8 to Debra Parris, the sentencing Guideline calculations in  
9 Ms. Parris' agreement do not include an enhancement for  
10 sophisticated means, so it asks the question are we doing  
11 it here?

12 In fact, Ms. Parris was certainly more  
13 involved with the transfer of the child to her own  
14 relative. She was present in Texas. My client was not.  
15 My client's involvement really ended after she was asked  
16 to help by the Poland clients develop options, and she  
17 was not involved in the specific travel logistics.

18 THE COURT: Okay. I am going to find that  
19 the sophisticated means provision doesn't apply in this  
20 case. You raise objection with regard to the other  
21 portion of 2B1.1 with regard to whether or not the -- a  
22 substantial part of the fraudulent scheme was committed  
23 from outside the United States.

24 What's kind of the best argument on that?

25 She is here, but is that particularly



1 important, the fact that she is here?

2 Wasn't the whole scheme set up to bring a  
3 foreign-born child to the United States. Wasn't her role  
4 of business centered around the idea of international  
5 adoptions?

6 MR. SEARBY: Yes, your Honor. This case did  
7 involve an international adoption as the Court knows from  
8 Poland. However, on this point, when you look at the  
9 Government's sentencing memorandum, Ms. Cole and the  
10 Government agree that the purpose of the enhancement is  
11 where Defendants locate conduct overseas in order to  
12 avoid detection.

13 THE COURT: I am not sure -- do you have the  
14 Guidelines right in front of you? Take a look at  
15 2B1.1(b) (10). So read along with me. "If" -- and then  
16 subparagraph (a), are you with me?

17 MR. SEARBY: Sorry, your Honor. I brought  
18 the big one.

19 MR. MANNING: I believe that's page 84.

20 MR. SEARBY: I am with you, your Honor.

21 THE COURT: In subparagraph (a), "the  
22 Defendant relocated or participated in relocating a  
23 fraudulent scheme to another jurisdiction to evade law  
24 enforcement or regulatory officials," then colon, "a  
25 substantial part of the fraudulent scheme was committed

1 from outside the United States," colon again or -- so  
2 doesn't that suggest that (b) is alternative to (a) and  
3 that it is not a requirement that there be -- that there  
4 be a joining of the relocation possibility with the  
5 substantial part of the scheme being outside the  
6 United States? They are alternatives, right, (a), (b),  
7 and (C), but you don't need (a) to have an application of  
8 (b).

9 MR. SEARBY: Well, your Honor, I would agree  
10 with the Court that part (b) indicates that locating an  
11 operation overseas --

12 THE COURT: But it doesn't say that, it  
13 doesn't say "locating." It says a "fraudulent part of  
14 the scheme was committed outside the United States."

15 MR. SEARBY: I am reading the example it  
16 gives.

17 For example, "in a telemarketing scheme  
18 located in the main office of the scheme in one  
19 jurisdiction but locating soliciting operations in  
20 another jurisdiction ordinarily indicates  
21 sophistication."

22 THE COURT: Yeah, but -- and let me ask the  
23 Government to chime in as well -- I think perhaps you  
24 misread the Guideline. Under (b) (10), are there not  
25 three alternative independent ways (b) (10) can be

1 violated or be applicable, one where there is an  
2 intentional relocation, a second one where there is a  
3 substantial part of the fraudulent scheme committed  
4 outside the United States, or three, the offense  
5 otherwise involves sophisticated means.

6 Do you have a position? Am I missing that  
7 or --

8 MR. MANNING: Your Honor, the Government's  
9 position is as the Court is reading that correctly.  
10 Exactly as the Court has stated, these are three  
11 independent grounds for the enhancement to apply, and the  
12 independent ground upon which the Government is relying  
13 is the prong in (b), which requires that a substantial  
14 part of the scheme be committed from outside the  
15 United States.

16 And the appellate case law that the  
17 Government cites the Williams case, the Orno case, all  
18 hold that when the Court is evaluating the conduct, it is  
19 not merely a conduct of the Defendant but the conduct of  
20 the entire conspiracy.

21 For the reasons we set forth in our  
22 submission, as the Court has already put its finger on,  
23 not only was a substantial part of the conduct here  
24 overseas, the conduct overseas was integral. You  
25 couldn't have the scheme without EAC's clients being in

1 Poland seeking to adopt Polish children, under Polish  
2 law, through Polish courts, obtaining visas from the U.S.  
3 Embassy in Poland and then for the Defendant Margaret  
4 Cole to tell false statements to the Polish Central  
5 Authority when they were --

6 THE COURT: Isn't that what the Williams  
7 case says?

8 MR. SEARBY: Um, your Honor, it does but a  
9 couple points:

10 First of all, I agree with the Court that  
11 these are stated in the alternative, but I believe if the  
12 Court goes back to the original 1998 Sentencing  
13 Commission Guidelines policy statements and official  
14 commentary that we cite, that was the original purpose  
15 underlying where a substantial amount of the conduct is  
16 overseas, but let's talk about really the point whether a  
17 substantial amount of the conduct, it is not whether  
18 there is conduct overseas; it is whether there is a  
19 substantial amount was overseas.

20 Really, the gravamen of the offense here is  
21 what transpires after they leave Poland. In fact, if you  
22 read the FBI 302 report of interview of Poland clients,  
23 they make it clear they did not have their minds made up  
24 until they were flying home.

25 So the offenses for which Ms. Cole has pled

1 guilty involve reporting violations. None of the charged  
2 Defendants here ever left the United States in connection  
3 with this offense. And the only overt act in the  
4 indictment that was committed overseas is a reference to  
5 an unindicted co-conspirator assisting the Poland clients  
6 with obtaining the visa, which they did in Poland.  
7 That's the only act.

8           When you again get into the FBI 302 and take  
9 out the lawyer's spin and see what Poland clients said  
10 actually happened, it is not clear that there was any  
11 specific assistance as to obtaining the visa and clear  
12 that the Poland clients who were never charged as being  
13 participants in this scheme were wholly responsible for  
14 obtaining the visa in Poland, which involved them listing  
15 the address to which they intended to travel with the  
16 child when they left.

17           THE COURT: Okay. I will overrule the  
18 objection. I think that under 2B1.1(b)(10), there is  
19 three alternative ways that the Guideline could play into  
20 this, and the second of those is when there is a  
21 substantial part of the fraudulent scheme that was  
22 committed from outside the United States, and in this  
23 case, the whole background of the scheme was to  
24 perpetrate a fraud on the Polish authorities and  
25 perpetrate a fraud on the United States authorities with

1 regard to the Polish adoption.

2 So I find that (b) (10) applies, and I will  
3 overrule your objection as to that.

4 Your second objection, I believe, is --  
5 deals with vulnerable victim, two-level increase. What's  
6 the best argument on that? I mean, this child -- do you  
7 deny that the child herself was a victim?

8 MR. SEARBY: She certainly was a victim,  
9 your Honor, and it is a terrible --

10 THE COURT: Do you believe she was  
11 vulnerable?

12 MR. SEARBY: Within the definition of the  
13 Guidelines, she was vulnerable, and that the Guidelines  
14 indicate that age, a child is a vulnerable victim. We  
15 are not arguing that.

16 What we are arguing is that the crime by  
17 which she was victimized is not the crime for which my  
18 client is here today. And I think that the important  
19 point that the Government obscures in its memorandum goes  
20 to a legal point, and that's the lack of proximate  
21 causation. The Guideline applies where the offense of  
22 conviction causes harm to a vulnerable victim.

23 THE COURT: Well, in this case, did -- do  
24 the regulations require an earlier home, basically a  
25 certification of the adopting parent?

1           MR. SEARBY: Your Honor, the regulations to  
2 adopt a child, if that's the question, would require a  
3 home study and for the child to be vetted.

4           THE COURT: Was there any home study done of  
5 the Parris location?

6           MR. SEARBY: Yes, your Honor, and this is  
7 exactly where I was headed. There is a significant  
8 intervening event, and that is before the crime is  
9 committed against the child in the United States. The  
10 Parris relatives are vetted by the state.

11          THE COURT: And that's part of the fraud  
12 scheme. They get the adoption in February of '16,  
13 right?

14          MR. SEARBY: Well, your Honor, I don't agree  
15 that it is a fraud. I think to the issue of this  
16 enhancement --

17          THE COURT: Didn't your client basically  
18 represent Poland and to the United States that -- she  
19 failed to indicate to them that the adoption had taken  
20 place before they communicated with her.

21          MR. SEARBY: I believe it was the opposite,  
22 your Honor, that she reported the dissolution of the  
23 foreign adoption, and she reported to the COA, the  
24 Council on Accreditation, that the adoption was in  
25 process when I believe the adoption was already final

1 under state law.

2 But the point I want to go to, which is not  
3 in the Government's memorandum and there are statements  
4 in the Government's memorandum that become misleading to  
5 the Court when this fact is admitted is the fact that the  
6 crime occurred after the Parris relatives had a home  
7 study, were vetted by the state, and were approved to  
8 adopt the child under state law, and it is after that  
9 point in August of 2016 when the crime against the child  
10 occurred.

11 So we can ask ourselves if the crime had not  
12 occurred in August, but the Parris relative father three  
13 years later was driving drunk, and the child was injured,  
14 would my client still be responsible as, you know, for  
15 harm to a vulnerable victim, and I think the answer is  
16 no, and the answer is still no in August '16 because  
17 there is a significant intervening event.

18 THE COURT: Is the Texas juvenile court, if  
19 Texas is going to approve the placement with the Parris  
20 family, does that end any violation of failing to report  
21 to the Polish authorities where the child was actually  
22 going to go just simply because some state court makes  
23 a decision that it is okay to place with the Parris  
24 family?

25 MR. SEARBY: I don't think it does, and the



1 issue of reporting violations, in fact, my client has  
2 pled guilty to a reporting violation, which occurred  
3 after the adoption was finalized. But this particular  
4 enhancement is focused on the crime of conviction causing  
5 harm to the child, and the Government's theory of the  
6 case was that because the child was transferred without  
7 being vetted the harm occurred.

8           The other fact I would want the Court to  
9 know is that in July of 2015 when the child was  
10 transferred to the Parris relatives at the airport in  
11 Texas, at that point, EAC as far as my client knew had  
12 ordered a home study on the Parris relatives. As rightly  
13 pointed out in the PSR, that home study was delayed at  
14 the advice of counsel, but that's true, the full  
15 situation that occurred.

16           THE COURT: On this vulnerable victim, does  
17 the Government have an argument on that?

18           MR. MANNING: Can you repeat the question,  
19 your Honor?

20           THE COURT: On the vulnerable victim, it  
21 sounds like counsel for Ms. Cole is arguing that she  
22 couldn't have been a vulnerable victim. The state of  
23 Texas otherwise approved the placement with the Parris  
24 family.

25           MR. MANNING: Yes, your Honor. It is the

1 Government's position that the actions of the state of  
2 Texas in February 2016 are essentially irrelevant to  
3 Ms. Cole's culpability to the charged crimes and  
4 irrelevant to the application of this enhancement.

5 We believe the enhancement applies because  
6 in the Government's view the gravamen of this conduct is  
7 the conspiracy led by Margaret Cole and her  
8 co-conspirators in July of 2015 to direct their client to  
9 transfer a vulnerable Polish orphan into a home that was  
10 completely unvetted and, therefore, was dangerous, which  
11 Cole knew, and the child would never have been placed in  
12 the home if not for the direction of Cole as your Honor  
13 put its finger on.

14 There was no home study done at the time.  
15 Poland clients had even sent an e-mail to Margaret Cole  
16 while they were still in Poland saying, has this family  
17 done their home study, to which Margaret Cole never  
18 responded.

19 She caused the child to be placed into that  
20 home. If there had been a home study, it would have  
21 uncovered that one of the parents had a domestic violence  
22 record. If the Polish authorities knew that information,  
23 the Polish authorities, it is our understanding, would  
24 not have allowed that child to go into that home.

25 And the Polish authorities also would not

1 have allowed the child to be split from the child's  
2 sibling, and the Polish authorities describe that in  
3 detail in their victim statement to the Court.

4 And so but for Margaret Cole's conduct, the  
5 child never goes in the home. The fact that Texas in  
6 February of 2016 thought this was okay does not change  
7 the fact that Cole is a responsible place in a dangerous  
8 home and worked out tragically as we know.

9 For those reasons, we believe the  
10 enhancement applies.

11 Thank you.

12 MR. SEARBY: Your Honor, may I quickly  
13 respond to one point?

14 THE COURT: In the FBI report doesn't the  
15 Utah couple, aren't they quite clear that they assumed or  
16 been led to believe that the Texas couple, the  
17 Parris couple had already received approval for the  
18 adoption?

19 MR. SEARBY: Your Honor, my recollection is  
20 they weren't clear on that point, whether they had an  
21 understanding of home study, but I am going by memory,  
22 your Honor. I do want to respond to my colleague's point  
23 though;

24 That Ms. Cole caused the child to be placed  
25 with the Texas family, and I think it is important to

1 remember, first of all, they were given a list of  
2 options.

3 Second of all --

4 THE COURT: The list of options, your client  
5 had a number of other adopting families that were in  
6 Poland at the same time, right?

7 MR. SEARBY: I believe there were other  
8 families.

9 THE COURT: And almost from the get-go  
10 hadn't they expressed a desire for a child that was one  
11 to two years of age? And hadn't they also, when they got  
12 to Poland and had the emotional trouble with the older  
13 daughter, hadn't they asked several times whether it  
14 might be possible to just adopt one?

15 MR. SEARBY: Your Honor, they talked about  
16 all options. I think one point that is important and it  
17 is clear, the Court read the FBI 302 and on behalf of  
18 Ms. Cole, I am appreciative of that fact because I think  
19 it puts the offense in context, but the Poland clients  
20 were very clear that they were not going to leave the  
21 child in Poland, and as of --

22 THE COURT: That's because your Poland agent  
23 told them the child would never be adopted, that the  
24 child would get a red mark against the Parris, and that  
25 they would spend the rest of their life in an orphanage.

1           MR. SEARBY: I think they were influenced by  
2 those comments, but if you read the FBI report of  
3 interview, they describe concerns for the condition of  
4 the children in foster care in Poland.

5           In any event, this came to Ms. Cole late,  
6 and at the point they came to Ms. Cole, there were  
7 approximately 48 hours between when Ms. Cole responded  
8 and first spoke to the mother of Poland client.

9           And when they became the parents under  
10 Polish and U.S. law, and they did not cause -- my client  
11 did not cause the child to be placed there. They were  
12 given options, and in the FBI report of interview, they  
13 make it clear that they believe that Ms. Cole was acting  
14 in good faith; that she was trying to help, and she did  
15 not unduly influence them, that it was Ms. Parris they  
16 believe two years after the fact who was responsible for  
17 that.

18           THE COURT: Okay. Well, I am going to  
19 overrule the objection. I do think the child was a  
20 vulnerable victim.

21           I do think -- first of all, a victim of the  
22 offense under the Sixth Circuit Webster decision. And I  
23 do think it is fairly obvious the child was vulnerable as  
24 well. So I will overrule the objection as to those two  
25 levels.

1 I think the next objection is to 3B1.3, and  
2 the application of the abuse of position of trust. In  
3 this case, what's the Government's best argument on  
4 that?

5 She to some degree was licensed or certified  
6 to run an adoption agency. Is that enough to put  
7 somebody in a position of trust?

8 MR. MANNING: Your Honor, that's one of the  
9 factors that we point to. The Government's -- the  
10 Government would believe the two best arguments for why  
11 the abuse of trust enhancement applies, first off,  
12 central to the scheme is the fact that EAC was licensed  
13 and accredited to carry out adoptions in Poland.

14 And the letter from the Polish Central  
15 Authority to this Court makes clear that when the Polish  
16 Central Authority licenses a U.S. agency to coordinate  
17 adoptions of their own vulnerable orphans, that they  
18 trust that the U.S. agency will follow the applicable  
19 rules and will disclose to the Polish Central Authority  
20 that they are following the rules.

21 They put their trust in EAC and in Cole to  
22 do that, and the EAC led by Margaret Cole abused that  
23 trust by concealing from Polish authorities this plan to  
24 split two siblings, and the Polish Central Authority,  
25 their witness Mr. Pedgorski, at the trial would have made

1 clear --

2 THE COURT: That's true to some degree in  
3 all fraud cases.

4 Is the cornerstone of the position of trust  
5 whether the position is one that inherently has  
6 discretion?

7 MR. MANNING: Yes. The comments to 3B1.3  
8 emphasize the importance of an employee who has  
9 discretion and, therefore, is not subject to oversight.

10 THE COURT: In this case, Poland may have  
11 relied upon the agency to do an honest report, but I am  
12 not sure how an abuse of a position of trust, it seems  
13 abuse that the discretion is not inherent in the giving  
14 of a false statement.

15 MR. MANNING: Well, your Honor, we have two  
16 arguments in response to that. One, Margaret Cole was  
17 the executive director of the agency, and so the way we  
18 read that language about people who have positions that  
19 are subject to discretion, not subject to oversight,  
20 there was no one at EAC who could stop her once she put  
21 together this plan.

22 And the Sixth Circuit's language in Freeman  
23 is instructive where the Sixth Circuit in Freeman says  
24 the essence of an abuse of trust is when you have a  
25 victim who is the sort of having less knowledge and has

1 to turn to someone who by virtue of their position the  
2 victim trusts and places their trust into that person to  
3 sort of guide them to do the right thing.

4 Here the Poland clients had the situation  
5 where they were in Poland, and they realized they might  
6 not be able to raise these two kids, and they turn to  
7 Margaret Cole as the executive director of the agency and  
8 trust her to lead them to a solution that with all of her  
9 experience and expertise would be safe and ethical and  
10 legal.

11 THE COURT: I am not sure you are not  
12 conflating the fact that there may have been, you know, a  
13 fraudulent -- a reliance upon fraudulent conduct and  
14 conflating that with the whole issue of: Were they given  
15 particular discretion?

16 In this case, the two parents apparently had  
17 kept some discretion themselves as to whether they were  
18 going to turn the child over in the final transition. So  
19 how could they have been relying upon -- and they had  
20 been given these three options. Two of them seemed to be  
21 fairly obviously not workable.

22 How was Cole given the discretion to make  
23 the final decision?

24 MR. MANNING: Cole has the discretion to  
25 guide her clients how to resolve the situation and that



1 the clients trusted her. If they are going to give  
2 options, the clients trust those options are legal and  
3 safe, and it is Cole who has decades of experience in  
4 this field that she has touted and bringing her clients  
5 into her business. The clients are in Poland. They have  
6 never done an adoption before, and so they turn to her  
7 and place their trust in her, and when she is given  
8 options, she has the reasonable expectation that the  
9 options will be legal, that the options will be  
10 appropriate, and Cole abused that, and Cole made a choice  
11 to give an option that included, you know, this illegal  
12 scheme.

13 THE COURT: Do you have any response on  
14 that?

15 MR. SEARBY: Your Honor, to the extent the  
16 Government is now trying to argue that Ms. Cole abused a  
17 position of trust with the clients, the clients don't  
18 believe that.

19 Again, if you go to the FBI 302 and see what  
20 they are saying two years after the fact, they are saying  
21 take Ms. Cole was a good person and, quote unquote,  
22 trying to help. So they don't believe she abused a  
23 position.

24 THE COURT: I am not sure that's the center  
25 of the decision on the position of trust, you know,

1 whether the duped party appreciates that they were duped.  
2 Isn't it more a question as to whether Cole by regulation  
3 or statute was otherwise put in a position where the  
4 certifying agency had relied upon her discretion.

5 MR. SEARBY: Well, as the Government said,  
6 the question goes to really whether they are subject to  
7 oversight.

8 The classic abuse of the position of trust  
9 is the lawyer is put in as a fiduciary person and as a  
10 competent person and steals their money.

11 EAC was subject to the whole system of  
12 international adoptions to significant oversight. Under  
13 that system, the Council on Accreditation was appointed  
14 to act for the State Department and to conduct audits of  
15 the EAC, to conduct physical inspections of their  
16 offenses, and then EAC every four years had to go through  
17 a reaccreditation process.

18 I think to the Court's question, to my  
19 friend from the Government, if you extend the enhancement  
20 this far, then in virtually every case when somebody does  
21 business with the Government or interfaces with the  
22 Government, a perceived false statement or false  
23 statement of conviction would result in the application  
24 of this enhancement, and I think it stretches the  
25 enhancement way beyond its purpose.

1                   MR. MANNING: May the Government respond to  
2 one point?

3                   THE COURT: Go ahead.

4                   MR. MANNING: With respect to the oversight  
5 provided by Pilla, the evidence at trial would have shown  
6 that a centerpiece of that oversight is that the  
7 executive director as Margaret Cole had to provide a  
8 compliance with all the governing regulations, and the  
9 evidence would have shown that within that certification,  
10 she had done so after she organized the scheme.

11                   And therefore, she was placed in trust to  
12 certify to her compliance honestly, and she didn't. She  
13 sent in a false certification in a sense.

14                   To the Court's point, COA does not have the  
15 resources by every accredited agency in the United States  
16 and COA depends on the certifying honestly, and in this  
17 case, Ms. Cole abused that trust.

18                   Thank you.

19                   THE COURT: I think to some degree you are  
20 correct there, but they rely on them, but I nonetheless  
21 am going to sustain the objection. I think the  
22 cornerstone of 3B1.3 is really whether a Defendant has  
23 been put in a position where significant discretion was  
24 given by either regulation or by practice to the  
25 Defendant.

1           And in this case, you correctly make an  
2           argument that the Polish authorities and to some degree  
3           the American authorities relied upon her statement.

4           But I don't think that's the same  
5           determination as a determination as to whether the  
6           position itself gave her any particular discretion that  
7           would justify the 3B1.3 addition. So I will sustain the  
8           objection as to that.

9           The Government had raised -- do you have any  
10          other objections?

11          MR. SEARBY: Your Honor, on behalf of  
12          Ms. Cole, we had a further objection to the organizer,  
13          leader, manager --

14          THE COURT: That's correct. So in this,  
15          what's the best argument you have with regard to that?

16          MR. SEARBY: Your Honor, again, I think if  
17          you walk through the 302 and you listen to the Poland  
18          clients about what actually happened, Ms. Cole didn't  
19          organize the conduct here?

20          In addition, the case law around this  
21          enhancement focuses on Ms. Cole managing other  
22          individuals, and her involvement was limited. Again,  
23          shortly before the adoption being finalized in Poland,  
24          Poland clients on their own initiative reached out and  
25          asked her for help, and again, they believe Ms. Cole was

1     trying to help. Ms. Cole was, in fact, a limited  
2     participant in what occurred.

3             The Government has relied on the fact that  
4     she was the director of EAC to suggest that this  
5     enhancement is appropriate. I think the Sixth Circuit's  
6     decision in Camper cited in other sentencing memo is  
7     instructive in this regards, and what matters is not that  
8     someone is an organizer or a leader in an organization or  
9     even in the criminal conduct; what matters is you manage  
10    the conduct.

11            I think we can come back to the Court's  
12    word, the discretion here, and a lot of what transpired  
13    here was at the discretion of the Poland clients. They  
14    were the ones who said they were not going to leave the  
15    child in Poland. They were the ones who chose the Parris  
16    relatives as the family over the option of other families  
17    and also respite care, which was really my client's  
18    recommendation.

19            And I would note, as we do in other  
20    sentencing memos, Ms. Cole placed substantial discretion  
21    and had limited oversight of what Ms. Parris did. In  
22    fact, Ms. Cole gave her power of attorney to do anything  
23    in furtherance of the business of the EAC. So for those  
24    reasons and those stated in the sentencing memo, we  
25    believe the organizer, manager, enhancement is

1 inappropriate under the facts of this case.

2 THE COURT: In her discussions with Parris,  
3 didn't she tell Parris to get the family to agree that  
4 they had only taken the child for temporary holding?

5 MR. SEARBY: Your Honor, there is the e-mail  
6 that the Court has probably seen where Ms. Parris sends  
7 an e-mail -- I believe it was Ms. Parris sends an e-mail  
8 to that effect to Ms. Cole.

9 I have no information that e-mail was ever  
10 used. But I think it is important that in the trial of  
11 the crime against the child committed by the Parris  
12 relative, Ms. Parris repeatedly testified under oath  
13 that, in fact, the transfer was for respite care.

14 So that would have been a true statement at  
15 the time. In fact, the only legal status -- they  
16 couldn't say the child was transferred to the adoptive  
17 parents because they had no legal status. The only legal  
18 status they had at the time of the transfer in 2015 was  
19 for temporary care pending either an approval of an  
20 adoption, and that may have been their hope and dream,  
21 but that was not, in fact, the status in July of 2015  
22 when the child was transferred from Poland clients to the  
23 Parris relatives.

24 THE COURT: But it was never intended to be  
25 respite with the idea that the child would go back to the

1 Utah couple, was it?

2 MR. SEARBY: Your Honor, if you look at the  
3 report written by the social worker, Nancy Wolf attached  
4 to our sentencing memo who spoke to Poland client right  
5 before they left Poland, the discussion was about  
6 temporary respite care.

7 There are also e-mails between my client and  
8 Poland client where they discuss the benefits of respite  
9 care. In fact, Poland client says that she is even  
10 having cold feet about transferring the child  
11 temporarily. So no, I would not say that was never the  
12 discussion.

13 That was, in fact, my client's hope that  
14 what would happen was they could return to their home  
15 after six weeks in Poland. They could get a break for  
16 this child who they reported was extremely difficult, and  
17 then, they could make a clear decision about whether  
18 they co-parent the child or whether there would be  
19 another solution.

20 THE COURT: Well, Parris though, Parris at  
21 your client's direction solicited the e-mail from the  
22 recipient couple, right, falsely saying that it was only  
23 a temporary guardianship.

24 MR. SEARBY: Your Honor, my client is  
25 unclear on it. Ms. Parris may say she did it at

1 Ms. Cole's suggestion, but I think you have to ask  
2 yourself --

3 THE COURT: She gave that to your client,  
4 and your client then forwarded it on, correct?

5 MR. SEARBY: That's correct, and Ms. Parris  
6 testified over and over in a Texas Court that, in fact,  
7 the transfer was for respite care.

8 THE COURT: But your client knew that the  
9 Parris couple was, you know, they were brought into the  
10 play only because of your client, right? Your client  
11 said there are three options, a single New York woman, a  
12 Utah couple with five or so kids, and the Parris couple  
13 which seemed attractive because they had one daughter  
14 relatively close in age to the 5 year-old.

15 MR. SEARBY: There was three options, and  
16 there was a fourth.

17 THE COURT: Who gave the fourth?

18 MR. SEARBY: As I understand it, it was a  
19 foster care situation in Utah.

20 THE COURT: Do you have some response on the  
21 manager?

22 MR. MANNING: Yeah. Thank you, your Honor.

23 Briefly, first, the Government is puzzled by  
24 the advocacy by the defense here because Ms. Cole pleaded  
25 guilty under oath in this Court to Count 11 and Count 13,



1 both of which at their core had false statements about  
2 saying that this was for respite care when Cole knew that  
3 it was not at the time the child came out of Poland, we  
4 are surprised this issue is being revisited here.

5 As for the application of the organizer,  
6 leader enhancement, this Court is exactly right, this  
7 two-point enhancement that we are seeking under the Sixth  
8 Circuit law, recruiting someone into the conspiracy or  
9 supervising someone under the conspiracy is sufficient  
10 for the enhancement to apply.

11 Here Margaret Cole brought Parris into the  
12 conspiracy. Parris otherwise had no contact with the  
13 Poland client. She brought her into the conspiracy,  
14 recommended that her relatives take this child,  
15 coordinated with Parris to direct these false statements.

16 The e-mail your Honor is referring to is  
17 dated December 9th, 2016, and in Debra Parris' guilty  
18 plea, she indicated she sent that to Ms. Cole at Cole's  
19 direction to falsely stay the detention with respite  
20 care.

21 Two days later Margaret Cole uses that to  
22 send the false statement to Polish authorities repeating  
23 this falsehood, relying on what she has obtained from  
24 Debra Parris. Parris is a salaried EAC employee, and so  
25 we also argue that Margaret Cole organized and led

1 co-conspirator 1's participation in this as well who  
2 depended on EAC for hundreds of thousands in revenue.

3 And for all these reasons for the manager,  
4 the Carter and Rexton precedent in the Sixth Circuit, the  
5 organizer enhancement applies here, your Honor.

6 MR. SEARBY: One sentence, your Honor.

7 My client did not manage or supervise the  
8 day-to-day activities of the other individuals who were  
9 charged.

10 THE COURT: Okay. I am going to overrule  
11 the objection to the two-level increase for the  
12 organizer, leader. There was other participants.

13 I find that the Defendant really had the  
14 decision-making authority, and she was involved with the  
15 recruitment of Parris, and there is no indication that  
16 she got a larger share of the money, but she did exercise  
17 a degree of control that was over Parris and over the  
18 others that I think justifies the 3B1.1 increase.

19 I think those are all the objections that I  
20 had seen. The Government raises one objection as best I  
21 understand arguing that medical conditions are not  
22 specifically a grounds for a sentencing decision.

23 Do you have anything you want to say on  
24 that?

25 MS. RICE: Thank you, your Honor. I can

1 speak to that.

2 In the initial presentence report, there  
3 were limited medical records included, and that was  
4 simply commenting the Government had not seen more  
5 specific records. During the Government's discussion of  
6 the 3553(a) factors, we will speak further as to the  
7 specific medical conditions identified in the final PSR.

8 To the extent this is an objection, it is an  
9 objection to any variance or departure based on medical  
10 condition.

11 THE COURT: Okay. Medical conditions I find  
12 under more recent authority to be something that can be  
13 considered. So if that was an objection to that, I will  
14 overrule it.

15 So in this case, I would set the base  
16 offense level at 6. I would find there should be a  
17 six-level increase under Guideline 2B1.1(b) (10), which  
18 would take it to 12.

19 I find a further two-level increase because  
20 I find a vulnerable victim was involved. I give a  
21 further two-level increase because I find the Defendant  
22 under 3B1.1 that the Defendant was a leader, manager, or  
23 supervisor of the criminal activity.

24 I would decline to give the 3B1.3 increase  
25 that is suggested because I find the position of trust is

1 not applicable. That adjustment is not applicable in  
2 this case.

3 So I set the adjusted offense level at 16.  
4 The Defendant gets two levels off for acceptance of  
5 responsibility. The total offense level comes in at 14.  
6 The Defendant has no Criminal History points. She  
7 receives a Criminal History Category I.

8 So having made those findings, does the  
9 United States have any argument before sentence is  
10 imposed?

11 MS. RICE: Thank you, your Honor. May I  
12 approach the podium and speak from the podium?

13 THE COURT: Yes. Let me ask you to hold for  
14 just a second. Okay.

15 Do you have any argument?

16 MS. RICE: Thank you, your Honor. Before I  
17 begin, there are victims that would like to speak. Would  
18 you like to hear from them now or after the Government  
19 makes argument?

20 THE COURT: Why don't you ask them to speak  
21 before?

22 MS. RICE: Thank you, your Honor.

23 MR. DAVIS: My name is Adam Davis. This is  
24 my wife Jessica, my son Isaac. We would thank you, your  
25 Honor, for this brief moment today to share with the

1 Court a little of our experience with Margaret Cole and  
2 European Adoption Consultants.

3 In 2015, our family adopted a child from  
4 Uganda through European Adoption Consultants. Upon our  
5 return to the United States from Uganda, we reported to  
6 EAC many unseemly happenings in Uganda, via European  
7 Adoption Consultants, managers, and in-country team.

8 We requested on multiple occasions to speak  
9 with Margaret Cole regarding the bribery, the harassment,  
10 the exploitation, the threats, and the coercion that we  
11 had witnessed there believing Margaret Cole would be  
12 horrified by these happenings within her organization.  
13 None of our phone calls were ever returned by her.

14 When we learned a year later that the child  
15 we adopted was not uneducated, had not been abandoned by  
16 a neglectful or indifferent mother and had three times as  
17 many siblings as what we were told not to mention a huge  
18 extended family that loved our adopted daughter very  
19 much, we made the difficult but humane decision, the  
20 moral decision to reunite this child with the family and  
21 the mother who never intended to surrender her parental  
22 rights to her child to begin with.

23 After our child was returned home to her  
24 mother and family, only then did Margaret Cole try and  
25 contact us, not to follow-up on the many ethical concerns

1 we had expressed about her adoption outfit, not to  
2 inquire about our welfare or the welfare of our adopted  
3 child, Margaret Cole contacted us then to breathe threats  
4 and to protect the empire she had built praying upon the  
5 poor and exploited the world's most vulnerable children  
6 for financial gain. Margaret Cole is EAC, and EAC is  
7 Margaret Cole.

8 She is responsible for this criminal  
9 enterprise from top to bottom. The lowest level child  
10 finder in our daughter's rural village in Uganda spoke  
11 directly to Margaret Cole on the phone when our daughter  
12 returned home as our attorney can confirm. She is that  
13 intricately involved in her operation.

14 She cannot plead ignorance to anything when  
15 it comes to EAC. Margaret Cole not only swindled our  
16 family out of our life savings, trafficking children for  
17 adoption, but she was also prepared to slander me to my  
18 employer and rob me of my livelihood as well as our  
19 child's social worker at the time can attest.

20 Margaret Cole is guilty. Those willing to  
21 exploit the poor and commoditize the children of the poor  
22 in pursuit of wealth belong in their own nefarious  
23 category of inhumanity. We ask that her sentence today  
24 reflect this.

25 Again, thank you for the time.

1 THE COURT: Thank you.

2 MS. RICE: Thank you, your Honor.

3 I will reference the additional victim  
4 impact statements, which I know your Honor has received  
5 and read in a moment. But I wanted to start with, as my  
6 colleague referenced, a reminder that I didn't think we  
7 would have to go back over the ground of why we are here  
8 today.

9 But Margaret Cole has pled guilty to  
10 knowingly and willfully making false statements, to  
11 knowingly and voluntarily entering into a conspiracy to  
12 defraud the United States.

13 In her sentencing filings and argument  
14 today, there seems to be some backwards ground as to  
15 whether she truly is admitting to the conduct here.

16 The Government is not asking the Court to  
17 eliminate the two levels for acceptance of  
18 responsibility, but we are a bit perplexed we have to  
19 revisit ground we thought we already covered at our plea  
20 hearing and plea agreement.

21 So with that background, your Honor, this is  
22 a serious offense. This is not a one-day or a two-day  
23 offense. This is not a lapse in judgment. This is  
24 conduct that spanned over a year that involved lies to  
25 United States authorities, to foreign authorities, and

1 perhaps, most importantly, to couples who were putting  
2 their full trust in her with respect to the livelihood of  
3 children of orphans.

4 The Defendant has routinely referred to this  
5 as being a few days and feeling badly that she offered to  
6 help the Rumpuses. This was not a technical or  
7 administrative violation; this was not a reporting  
8 violation. This was making lies to COA, to the Polish  
9 Central Authority, and to Rumpuses.

10 THE COURT: What's your theory, if the  
11 Rumpus adoption fell through, what's the theory on how  
12 that impacts the Defendant?

13 MS. RICE: Thank you, your Honor. The  
14 testimony at trial would have been from the Polish  
15 Central Authority that EAC would have lost their  
16 accreditation, and at the time of the Rumpus adoption  
17 pending, Poland was 40 percent of the revenue for EAC.

18 THE COURT: Well, let me go back. They  
19 go over there. There is some indication they are told  
20 it would be just a visit, and they would come back and  
21 make a decision not to adopt anyone. Is that the  
22 background?

23 MS. RICE: With respect to when the Rumpuses  
24 first went to Poland?

25 THE COURT: Yes, in 2015.



1 MS. RICE: So they went to Poland believing  
2 they were adopting two sisters. And when they got there,  
3 they immediately discovered --

4 THE COURT: I thought the representative in  
5 Poland had made some statement to them, to the impact  
6 that if they got over there and decided they couldn't  
7 handle two, that they could just leave without any.

8 MS. RICE: You are referring to  
9 co-conspirator 1, your Honor?

10 THE COURT: Yes.

11 MS. RICE: So what the final understanding  
12 of the Rumpuses, they could not just take one or be red  
13 marked.

14 THE COURT: That's after they get over  
15 there.

16 MS. RICE: Correct. You are talking about  
17 in proceeding, going through the lengthy process of  
18 getting to Poland to adopt?

19 THE COURT: Right.

20 MS. RICE: Yes. They were given a number of  
21 adoptions who they could adopt, but initially, they did  
22 not want to adopt older children and were told there  
23 would be other options, and as your Honor is well aware,  
24 when they got to Poland with the two sisters, they -- it  
25 was more than they felt their family could handle, which

1 brings us here today.

2 I don't know if I answered your question  
3 accurately, your Honor.

4 THE COURT: So they get over to Poland.  
5 They spend six or seven weeks with the two young  
6 girls?

7 MS. RICE: Correct, your Honor.

8 THE COURT: And then, they try to -- they  
9 notice some fairly immediate difficulty with regard to  
10 the older child, less difficulty with regard to the  
11 younger child.

12 MS. RICE: Correct. They noticed difficulty  
13 with both, but they found the older one had more severe  
14 mental difficulties that would be difficult for them with  
15 their three sons and the younger child to provide the  
16 adequate care.

17 THE COURT: Aren't they then in a quandary  
18 because they obviously have grown to love these two girls  
19 and their concern for the two individual girls and had  
20 been told that the girls will just be condemned to a life  
21 in an orphanages if they don't take them?

22 Aren't they in a quandary where they can't  
23 handle two, but they don't want to leave either child  
24 there?

25 MS. RICE: That's correct, and I will note

1 that the 302 that the Court has from several years ago,  
2 we are glad the Court has that, the Rumpuses' interviews,  
3 but to note at that time, the Rumpuses were not shown nor  
4 were they aware of any of the false statements that the  
5 Defendant has admitted to, and there were are later  
6 interviews and testimony given by them.

7 But one thing they were consistent on  
8 throughout, they had been consistent on all of their  
9 testimony, they were not leaving either child there  
10 because they were told if they left one child in Poland,  
11 that child would be red marked, likely left in an  
12 orphanage and could potentially die.

13 THE COURT: Would Poland allow the  
14 immigration of a single one of these sisters?

15 MS. RICE: No. If the Polish authorities  
16 had been notified as they should have been, they would  
17 not have allowed the siblings to have been split up, and  
18 Mr. Pedgorski would have testified to that at trial and  
19 speaks to that in his impact statement.

20 THE COURT: So they are in a position where  
21 it is either all or nothing, right?

22 MS. RICE: Correct, your Honor, and while  
23 they realize they could not care for both children, they,  
24 of course, wanted nothing but the best for them. And  
25 that's why based on the representations from the

1 Defendant the Tufts family was so appealing. They  
2 believed this was a family that could give the adequate  
3 care and attention to the older child that she needed.  
4 They cared for her very much as evidenced by the fact  
5 that after she was horrifically abused, they spent years  
6 of their life and expense to get her back to her family.

7 But yes, your Honor, they certainly at the  
8 forefront of their mind was ensuring that both children  
9 were cared for and placed in a home where they would be  
10 safe, which speaking to the Defendant's role here, your  
11 Honor, she communicated with them.

12 They trusted her. They called her up, and  
13 as the 302 and e-mails show, they were in a very  
14 emotionally charged, very trying situation, and they  
15 turned to her and her thousand adoptions, years of  
16 expertise to do and guide them in what is legal.

17 She had multiple opportunities. It was  
18 referenced earlier that this all happened within 48  
19 hours. Forty eight hours was more than enough time to  
20 notify the Polish authorities that a family in Poland  
21 will not be taking both children to their home. Forty  
22 eight hours, if it is even 48 hours -- the Government  
23 submits it was much longer than that -- that is  
24 sufficient time to notify COA.

25 That is sufficient time to tell the truth.

1 The Defendant chose not to and instead facilitated and  
2 led this conspiracy to have the child transferred to a  
3 family that had no vetting, had no background check, and  
4 the Defendant in her years of experience, decades of  
5 doing intercountry adoption is well aware of the  
6 requirements for background checks and vetting, and  
7 indeed, when the Rumpuses asked has this family had a  
8 home study, there was no response.

9           There also has been reference to and various  
10 filings, this being a black swan event and this never  
11 happening before. Well, one of the counts to which the  
12 Defendant has pled guilty and admitted conducting  
13 committing is knowingly and willfully making a false  
14 statement. And the Defendant is well aware the need to  
15 tell the truth.

16           This is certainly not the first time. There  
17 have been reports required to COA or to foreign  
18 countries. So this is not a black swan event when it  
19 comes to telling the truth and being honest.

20           And here what is really telling, your Honor,  
21 and speaks to the Defendant's intent at the time of the  
22 original transfer of the children to the Tufts family is  
23 that months and months go by where she knows they have  
24 not been vetted, where the Polish authorities have not  
25 been notified, where COA has not been notified, and she

1 does nothing.

2 She tells no one, and when it comes time for  
3 the six-month post-placement, as she is well aware in  
4 every intercountry adoption are required from the family,  
5 there is no post-placement report for the child with the  
6 Tufts family.

7 One is submitted late and is not at all in  
8 line with the appropriate requirements of post-placement  
9 report. Yet, no disclosure is made at the time. The  
10 first disclosure, as your Honor is aware, April 2016, and  
11 that one contains false statements, lies,  
12 misrepresentations.

13 Now, your Honor, in the sentencing  
14 memorandum for the defense, there is a reference that  
15 this was not submitted by Margaret Cole. In the  
16 Government's supplemental exhibits and as testified to at  
17 trial, the only other employer whose name is identified  
18 there on the 2016 report, she would not have submitted  
19 anything to COA without the direction and authority of  
20 Margaret Cole. So whether or not she pressed "send," she  
21 caused the information to be made and false statements to  
22 be made.

23 With respect to the August 2016, false  
24 statement to COA, your Honor, several things speak  
25 volumes with respect to that.

1 First of all, it starts out by saying "we  
2 are not being investigated," again highlighting what was  
3 at the forefront of the Defendant's mind at the time; was  
4 not the injuries that had been sustained by this orphan  
5 but what was happening to her agency.

6 This is also referenced in the 302 report of  
7 the Utah family where they said when they spoke to the  
8 Defendant after learning what happened to the older  
9 child. She said this is going to ruin my agency." And  
10 indeed, at that point, as the Government has provided  
11 exhibits and highlighted and elicited at trial, Poland  
12 was more than 40 percent of the revenue for her business.

13 Accreditation was pending in foreign  
14 countries, in that country and other countries, and it,  
15 indeed, would have a significant effect on her business.  
16 But instead of being honest at that point, she continued  
17 to lie. She claimed the date of incident was August 30th  
18 of 2016 when, in fact, she had been notified weeks  
19 earlier, and this is significant because an injury like  
20 this must be reported within 48 hours.

21 She deliberately indicated the date as being  
22 within the 48-hour reporting requirement. This was not a  
23 technical or accidental mistake as she has admitted under  
24 oath; this was knowingly and willfully done intending  
25 that the fraudulent statement would influence COA and the

1 Polish authorities.

2 And the December 2016 letter to the Polish  
3 authorities, your Honor, in her sentencing filings, she  
4 references this was drafted by an attorney, and it may  
5 have been drafted in consultation with an attorney, but  
6 certainly, Margaret Cole had significant involvement, and  
7 her attorney would only know what to write based on the  
8 information she shared.

9 Indeed, in Government's Exhibit J there is  
10 an e-mail communication chain between her and her  
11 attorney, and what her attorney says "you must read all  
12 of it to be sure it says what we want," followed again by  
13 inquiring "did they have an approved home study?"

14 So acknowledging the importance of the home  
15 study and the fact it was not done. Following that the  
16 Defendant and her co-conspirator exchange e-mails in  
17 which the Defendant says to her with respect to the  
18 letter "let's do it ourselves. I will send you what I  
19 wrote for the training part."

20 So despite her efforts to minimize her  
21 involvement in this lengthy letter and repeated false  
22 statements, she was directly involved and deliberate and  
23 was given to the Polish authorities.

24 As referenced earlier by my colleague,  
25 intercountry adoption is a system based on trust. COA



1 has to rely on the integrity of the agencies and  
2 directors like Margaret the Cole. Certainly, the  
3 authorities, as Mr. Pedgorski detailed in his statement,  
4 rely on the trust and integrity and trust of people like  
5 Margaret Cole.

6 When it is abused, there are far-reaching  
7 damage as has been evidenced here. The victims, as your  
8 Honor highlighted, include the older child who, while it  
9 is fortunate that the Utah family fought to have her back  
10 in her family and they are working everyday to make sure  
11 she has a good life, she will never recover from what she  
12 suffered.

13 The Utah family themselves, as detailed in  
14 their victim impact statement, feel betrayed, have lost  
15 trust. It has permanently -- hopefully not  
16 permanently -- but severely damaged their entire family.

17 The other families that were pending  
18 adoption in Poland at the time that Margaret Cole led  
19 this conspiracy, they are also victims. They as outlined  
20 in the statement from Mr. Pedgorski and the State  
21 Department, they either were delayed in their adoptions  
22 or could not adopt any children at all.

23 And certainly, international relations were  
24 affected as detailed by the State Department and  
25 Mr. Pedgorski in his statement.

1           Now, this was not with respect to the  
2   3553(a) factors, and the nature and characteristics of  
3   the Defendant, certainly, the Government acknowledges she  
4   has done good things in her life.

5           There are families here she has created  
6   because of her work and adoption. The Government does  
7   not dispute that, and all of the people that wrote  
8   letters during the time in the Russia program, the  
9   Government does not dispute that those are good acts she  
10   has done.

11           But of note, all of those letters in support  
12   are from up through the mid 2000s. After the Russia  
13   program closed, things changed at EAC. That was a large  
14   basis of revenue for EAC, and it was not until the Poland  
15   program that there were European countries that EAC felt  
16   they could do adoption with, and that is why the Poland  
17   program was so important for EAC and the motivation for  
18   this year-long deceit and fraud.

19           With respect to the Defendant's background  
20   and characteristics, your Honor, she is educated. She  
21   attended a year of law school. Certainly, as I  
22   referenced, she has done some good acts, but that does  
23   not eliminate or avoid the seriousness and extent of the  
24   harm done here.

25           With respect to her medical conditions, your

1 Honor, the Government submits that they all can be  
2 treated in the Bureau of Prisons. There is nothing, at  
3 least based on the limited amount of medical records the  
4 Government received, that cannot be treated in custody.

5 There was reference to ongoing screenings,  
6 medications, and certainly other cases in this Circuit,  
7 in this District, including the Barro case, have  
8 individuals that have similar conditions that have  
9 received custodial sentences.

10 With respect to COVID and the argument that  
11 she would be eligible for compassionate release, all of  
12 the cases cited by Defendant were prevaccination, and  
13 courts have routinely denied extraordinary and compelling  
14 reasons for compassionate release when the Defendant has  
15 been vaccinated, and the 3553(a) factors do not warrant  
16 it as they do here.

17 Touching briefly on sentencing disparities,  
18 your Honor, as you are well aware, her co-Defendant  
19 Robin Longoria, who is certainly less culpable and pled  
20 guilty years earlier, received a sentence of 12 months  
21 and one day.

22 THE COURT: Are you familiar with the JSIN?

23 MS. RICE: I am, your Honor.

24 THE COURT: And the final offense level of  
25 14 with a Criminal History Category 1, are you familiar

1 with what the median and average sentences are?

2 MS. RICE: I am not for offense level 14,  
3 your Honor. I had calculated that based on offense level  
4 16, which the Government submitted we believed was the  
5 Guidelines calculation. So I can't speak to offense  
6 level 14. Certainly, if your Honor has that figure --

7 THE COURT: 81 percent of people received  
8 imprisonment that came under that Guideline at that  
9 offense level and Criminal History Category, and the  
10 average length of incarceration was 11 months. The  
11 median was 12 months.

12 So it appears that the broad majority of  
13 people in her Criminal History Category and her offense  
14 level received incarceration, and it ranged somewhere  
15 around 11 or 12 months.

16 Is there some argument given her age it  
17 should be somewhat lower.

18 MS. RICE: No, your Honor, it is not unusual  
19 for first time fraud offenders to be older, and  
20 certainly, at the time that she --

21 THE COURT: Somewhat older than the median  
22 age, but it is somewhat unusual at her age, right?

23 MS. RICE: Again, yes. Somewhat older than  
24 across all fraud offenses in this District, yes.

25 THE COURT: So relative to -- is there any

1 real argument for specific deterrence to be a factor?

2 MS. RICE: Specific deterrence, your Honor,  
3 no.

4 THE COURT: And relative to general  
5 deterrence, is that kind of a weak factor? How many  
6 people are going to hear about whether I give a longer  
7 sentence or shorter sentence? How many people are really  
8 going to hear and otherwise be deterred?

9 MS. RICE: Your Honor, I would respectfully  
10 disagree. The general deterrence is of utmost importance  
11 here because -- and I can't state it better than Ms. King  
12 from the Department of State said -- "countries in  
13 international organizations around the world have taken  
14 note of Ms. Cole's actions and how she has exploited the  
15 intercountry adoption for her own personal gain."

16 General deterrence is important in all white  
17 collar cases and fraud cases and absolutely is important  
18 here. Intercountry adoption is a system based on trust,  
19 and as the Defendant has referenced, the statute she pled  
20 guilty to has not had a conviction before.

21 So highlighting that this type of conduct in  
22 years of lies and false statements to foreign and U.S.  
23 authorities will not be stood for. So respectfully, your  
24 Honor, the Government submits general deterrence is very  
25 important in this case.

1                   And with respect to the sentencing  
2   disparities, your Honor, just briefly, thank you for  
3   those numbers, certainly, the Government believes that  
4   there is no basis to disparity or varying from the  
5   Guidelines or from these average and median sentences nor  
6   from the sentence of her co-conspirator. It is not  
7   unusual for first-time offenders to not have a criminal  
8   record. Indeed, in 2020 71.8 percent convictions --

9                   THE COURT: That's almost given. I think  
10   the statement was it is not unusual for first-time  
11   offenders not to have a record.

12                  MS. RICE: I'm sorry, your Honor. For  
13   individuals convicted under 2B1.1 to be first time  
14   offenders is what I meant to say.

15                  THE COURT: Okay.

16                  MS. RICE: And the statistic was that 71.8  
17   percent of individuals sentenced under the fraud  
18   provision 2B1.1 were first-time offenders.

19                  So the fact that she is not -- does not have  
20   a Criminal History does not place her in an unusual  
21   situation for a fraud offense.

22                  Finally, with respect to 28 U.S.C., Section  
23   994(j), which the defense references multiple times in  
24   their sentencing memorandum, the Sixth Circuit has  
25   repeatedly said that's a directive to the Sentencing

1 Commission, not to the judicial officers.

2 Indeed, the Guidelines were created  
3 substantially, in part, to address disparities in white  
4 collar offenses.

5 THE COURT: Let me ask you, generally with  
6 B1.1, she ends up at a 14 with a Criminal History  
7 Category I. Because of the way 2B1.1 operates, wouldn't  
8 most of the people that end up at 14, Criminal History  
9 Category I, wouldn't most of them be kind of larger  
10 dollar volume fraud Defendants where the conduct may well  
11 have involved significantly more money than this case?

12 MS. RICE: That may or may not be the case,  
13 depending on the enhancements. Certainly, that could be  
14 the case where there was lower dollar amount, and there  
15 were a number of victims or there were sophisticated  
16 means, so not necessarily, your Honor.

17 I don't think that only because it is under  
18 B1.1 means that there is significant dollar loss here,  
19 but the Government is not disputing the dollar loss here;  
20 that there is no dollar loss.

21 However, the damage and the seriousness of  
22 this offense cannot be measured in dollars.

23 THE COURT: Are you seeking any restitution?

24 MS. RICE: No, your Honor. The victims  
25 haven't requested restitution, and it is the Government's

1 position that those figures would be too difficult or  
2 complex to calculate. We concur that any harm suffered  
3 by the older child would be too difficult to calculate  
4 any restitution.

5 So no, your Honor, we are not seeking  
6 restitution from Margaret Cole.

7 There were requests made from victims  
8 related to the relevant conduct in the Uganda scheme, but  
9 the Government is cognizant that she has not been  
10 convicted of those. While they are relevant and speak to  
11 her character and the Court may consider all relevant  
12 conduct for sentencing, we are not seeking restitution.

13 THE COURT: Okay. Let me give counsel for  
14 the defense an opportunity to make argument.

15 MS. RICE: Thank you, your Honor.

16 And I would just reference again the victim  
17 impact statements from all of the victims, including the  
18 State Department and Mr. Pedgorski from Polish Central  
19 Authority.

20 Thank you.

21 MR. SEARBY: Your Honor, we would also ask  
22 to have the opportunity to have several individuals  
23 address the Court at this time.

24 THE COURT: Pick two that you want.

25 MR. SEARBY: Your Honor, I am going to have



1 a tough time when I walk out of here talking to the third  
2 one.

3 THE COURT: Flip a coin.

4 MR. SEARBY: All right. We will start, your  
5 Honor, with Alex Rokakis.

6 MR. ROKAKIS: Good morning, your Honor. May  
7 I remove my mask?

8 THE COURT: Yes.

9 MR. ROKAKIS: Thank you.

10 My name is Alex Rokakis. I will be brief,  
11 your Honor, as I have expressed my thoughts and my letter  
12 to the Court earlier this month. You have hundreds of  
13 pages from this file, including letters of support for  
14 Margaret Cole and letters from victims and testimony  
15 today from a victim.

16 Perhaps it is inappropriate for me, a  
17 33-year former member of the Office of the U.S. Attorney  
18 and a person who has not seen the entire file, to  
19 advocate for leniency for Margaret Cole, but regardless  
20 here I am today to speak on her behalf and argue for  
21 leniency.

22 In the United States, we don't have  
23 orphanages anymore, your Honor; we have foster homes. We  
24 no longer have orphanages. They have long fallen by the  
25 wayside. We have these foster homes where children

1 without parents are cared for.

2 But I have been to orphanages in Moscow  
3 where you walk in the door where the children are clothed  
4 and fed but not loved. You walk in the door, and they  
5 run up, and they throw their arms around you because,  
6 they want you to take them home and become their mama and  
7 or their papa.

8 I have seen these children, and I have  
9 adopted two of them. I know what good Margaret Cole has  
10 accomplished. Over 8,000 lives have been changed for the  
11 better; 8,000 adults that would have grown up unloved and  
12 turned out into the streets to fend for themselves.

13 My own son might have been conscripted into  
14 the Russian Army and been forced to fight in the Ukraine.  
15 Margaret Cole may have lost her adoption agency, but she  
16 has the eternal gratitude of thousands of people like  
17 myself who are forever in her debt.

18 Since a search warrant was executed on her  
19 home and business and she was indicted five years ago,  
20 she has suffered greatly. I pray that the good she has  
21 done outweighs the mistake she made on this one adoption,  
22 your Honor, and you take that into consideration.

23 Thank you, your Honor.

24 THE COURT: Thank you.

25 MR. SEARBY: Mr. Mack?

1                   MR. MACK: Good morning, your Honor. My  
2 name is Dave Mack. I am from Chicago. I and my wife  
3 adopted three children at different times, through EAC  
4 and with the help of Margaret Cole, and she changed our  
5 lives.

6                   THE COURT: What years?

7                   A JUROR: I'm sorry. What years did we do  
8 it? This was in the former Soviet Union, so it was '92  
9 and '94, '92 and '94.

10                  THE COURT: Go on. I just was trying to  
11 give context to your comments.

12                  MR. MACK: The former Soviet Union was the  
13 place. Our son was an infant, and he was in Penza,  
14 Russia. Our middle daughter was two and-a-half, and she  
15 was in Kazakhstan, and our third daughter is the one in  
16 1994, is from Moscow, an orphanage in Moscow. She is the  
17 one who wrote you a letter about her experience.

18                  She is in South Korea with the U.S. Army as  
19 a captain. I am here really to talk about, as Alex did,  
20 the accomplishments and the good deeds that Margaret  
21 really did. She changed lives with the 8,000 children,  
22 and I want to put in order of magnitude on the 8,000 plus  
23 children.

24                  It was over a 24 to 25 year period 8,000,  
25 slightly less than one child for everyday in that 24, 25

1 year period. So it was quite a body of work.

2 My particular children had lots of medical  
3 issues. We have been able to deal with those issues, and  
4 they are all on their own. They are adults. They are on  
5 their own financially, and I would say that the key to  
6 this is the children that she has helped, that have  
7 gotten adopted ended up in a better place than where they  
8 were. That is huge. And I feel -- I feel that should  
9 weigh something in the sentencing that you are going to  
10 give for Margaret Cole.

11 Thank you.

12 THE COURT: Okay. Thank you. Do you have  
13 any argument before sentence is imposed?

14 MR. SEARBY: I do, your Honor.

15 THE COURT: She will get a chance after you.

16 MR. SEARBY: Okay. Thank you, your Honor.

17 Your Honor, may it please the Court, the  
18 Court asked the Government questions under the 3553  
19 factors regarding general deterrence. There is no issue  
20 of specific deterrence. My client is not a threat to  
21 anyone and is no longer involved as a result of the  
22 Government's debarment in the adoption industry.

23 I think as the Court got a flavor during the  
24 Daubert hearing, Mr. Berger, I have learned through this  
25 case that the world of international adoption is a small

1 world, and what happened has happened to Ms. Cole is well  
2 known throughout that community. And regardless of the  
3 sentence the Court imposes, this has become a cautionary  
4 tail. And no one wants to go down the road Ms. Cole has  
5 been down.

6           Unfortunately, as you've heard today from  
7 two people and we could have brought many, many former  
8 clients to talk about what has happened, Ms. Cole's life  
9 has been defined by an adoption that went terribly wrong,  
10 not the thousands and thousands that went right.

11           And as I listened hand to the conversation  
12 between the Court and the Government and the Court  
13 rightly talked about the dilemma faced by the Poland  
14 clients and also faced by Ms. Cole, which she stepped  
15 into this situation, which was not of her own making, it  
16 should also be appreciated that these children in Poland  
17 were eligible to be adopted because, as was stated in the  
18 documents that were translated from the Polish  
19 government.

20           There were not individuals in Poland, that  
21 after six months that were willing to adopt them. It was  
22 at that point the Polish government was willing to have  
23 them adopted from abroad.

24           And of course, in the 302 you see the  
25 concerns for the condition of the children on behalf of

1 the Poland clients, which influenced their position,  
2 which was steadfast, that they were unwilling to leave  
3 the children in Poland. And that was really one thing  
4 they were certain about.

5 The government talked about in that 48 hours  
6 the Polish government could have been contacted. Yes,  
7 they could have been contacted, but the problem again,  
8 borne out by the FBI 302, the parents had made their  
9 decision.

10 In fact, they hadn't made a final decision  
11 when they left Poland. They made that decision at  
12 Charles DeGaulle Airport. According to what they said at  
13 the FBI in the 302 after they had a bad night and they  
14 finally decided that they could not parent both children,  
15 but during the 48-hour window, whether it is 48 hours, 72  
16 hours that the government talked about, they had not made  
17 a final decision and would have been inappropriate of my  
18 client at that point to notify the Polish government.

19 Ms. Cole did not get involved in the events  
20 that lead her to be before the Court today to commit a  
21 crime. She became involved because the Polish clients  
22 asked for her help, and again, they believed she acted in  
23 good faith.

24 We accept responsibility that Ms. Cole  
25 exercised poor judgment with reporting from those moments

1 forward, and the offense conduct, the stipulated conduct  
2 in the plea agreement speaks to that, and we accept that  
3 her disclosures to the interested parties were sometimes  
4 late. They lacked candor, but there were disclosures,  
5 and events were made.

6 THE COURT: Wouldn't she -- wasn't she  
7 largely covering herself?

8 MR. SEARBY: I think, your Honor, there was  
9 a motive in the end to deflect blame here.

10 THE COURT: I mean, maybe the most  
11 unseemingly is you have got this 5 year-old girl who  
12 seemingly is brutally raped. Is a 5 year-old that  
13 seemingly has gone through a medical examination before  
14 she ever leaves Poland.

15 And this child is to some degree torn apart.  
16 And your client's first reaction is to basically claim it  
17 must have happened in Poland at a time when the nurse  
18 that examined the child obviously said no way, shape,  
19 form. Was this something that happened before?

20 Your client did that two or three times,  
21 basically blaming it on some rape in Poland and rather  
22 than accepting the fact that Parris had done it.

23 MR. SEARBY: The Parris relatives.

24 THE COURT: The Parris relatives in Texas.

25 MR. SEARBY: Right. And I understand the

1 Court's concern, but let's put it in context; that in the  
2 disclosures where my client obviously placed an emphasis  
3 on the evidence of potential prior abuse in Poland, not  
4 in Texas --

5 THE COURT: What evidence was that? You  
6 know, I looked, and the child's statement was something  
7 to the impact that somebody in Poland had hit her foot.

8 MR. SEARBY: Yeah. The Poland clients noted  
9 the injuries to the foot. That's not what was at issue.  
10 What my client did in the disclosures and it is important  
11 is with her statement she forwarded the report from the  
12 detective in Texas.

13 THE COURT: Yeah, but didn't she to a major  
14 degree try to give an explanation that was completely  
15 different?

16 MR. SEARBY: No. I would not say that she  
17 tried to give an explanation that was completely  
18 different. She noted there were new injuries and old and  
19 I think at its worst --

20 THE COURT: Let me find that because for the  
21 life of me I don't remember her saying new injuries.

22 MR. SEARBY: But the point is the document  
23 forwarded with her communication was, in fact, the police  
24 report from the detective, which talked about the new  
25 injuries, which could not have occurred in Poland.



1           THE COURT: Right. Absolutely. So why  
2 would she bring them up in the letter to both the Polish  
3 officials and the letter to the detective?

4           MR. SEARBY: Well, your Honor, again, I am  
5 not trying to excuse the way it was written, but the  
6 information was provided from the detective, the full  
7 complete report, and Mr. Roberts, in fact, contacted the  
8 detective before trial to make sure that that report from  
9 the detective was complete and accurate to what the  
10 detective prepared.

11           And that report talks about old injuries and  
12 new injuries. You know, the way that the old injuries  
13 were emphasized, I understand the Court's strong  
14 disagreement with that. And that's why we are here.

15           But in that very same communication, if  
16 someone read the full communication, they would see the  
17 information as to the new injuries and the fact that the  
18 Parris relative --

19           THE COURT: She gives an explanation, and I  
20 am looking at the document. "Because there was evidence  
21 of old healed injuries that occurred before the adoption  
22 we didn't think that the issue raised in Detective  
23 Breen's letter regarding past sexual and physical abuse  
24 of the child and his report, that there was evidence of  
25 healed injuries that were possibly several years old was

1 reportable to the ministry."

2 She doesn't say anything about the new  
3 injuries.

4 MR. SEARBY: But she attaches the  
5 detective's report to it. I don't have in front of me  
6 what the Court is reading from, but I am not disagreeing  
7 with you. I just believe that that communication also  
8 forwarded the report.

9 THE COURT: And then, she goes on to say  
10 "immediately upon learning of the August 2016  
11 hospitalization, I telephoned my representative in  
12 Poland, and a report was made about the possible injury  
13 and abuse in Polish foster care."

14 So she is deflecting them from appreciating  
15 that the rape and the terrible injuries to this child  
16 occurred in Texas, not in Poland.

17 MR. SEARBY: I would agree with the Court,  
18 she is placing emphasis on the old injuries, but -- I  
19 mean, the detective's report talks about both, but  
20 obviously, new injuries were significant and could have  
21 only occurred in Texas, and we agree with the Court on  
22 that.

23 THE COURT: When did she have the nurse's  
24 notes?

25 MR. SEARBY: Your Honor, I am not certain of

1 the exact date or that she did, in fact, have the nurse's  
2 notes. What I believe she had was detective Bearden's  
3 report, but I am not certain on that question.

4 THE COURT: Do you remember the nurse's  
5 notes what document that was?

6 MS. RICE: Your Honor, there was a news  
7 article that detailed the substance of the assault and  
8 the abuse dated October 2016.

9 THE COURT: Yeah. And she had gotten that  
10 from the person, her representative in Poland, right?

11 MS. RICE: Correct, your Honor.

12 THE COURT: Do you know if she ever got the  
13 nurse's examination notes?

14 MS. RICE: Your Honor, we don't know if she  
15 got the actual notes, but the article includes the  
16 medical information, and your Honor, also Government's  
17 Sentencing Exhibit C, the August 2016 COA report,  
18 Margaret Cole writes, "this incident appears to have  
19 occurred in Poland."

20 MR. SEARBY: I apologize, your Honor. I was  
21 verifying that my client did not have the nurse's notes.

22 THE COURT: Okay.

23 MR. SEARBY: But I don't think she needed  
24 the nurse's notes. I think the detective's report said  
25 it all.

1           But there were two issues here: The major  
2 issue was, I think the Government and Poland would want  
3 to know that one of its children was grievously harmed.

4           The other issue was the extent to what the  
5 detective said, not simply my client, that there was  
6 prior injuries.

7           I think there was an ethical duty to report  
8 that, and that was reported to Poland in August, but  
9 reporting the old injuries doesn't in any way excuse or  
10 deny the new ones. It can't logically, if you study, the  
11 nature of the injuries.

12           Your Honor, if I could, I would like to  
13 address the fact that Ms. Cole's involvement in this  
14 event was not for personal profit. She was involved  
15 because she was asked to help.

16           The Government has suggested that it was a  
17 profit motive to deflect blame in order to protect the  
18 Poland program because it was such a significant part of  
19 the business.

20           THE COURT: Let me take you back to her  
21 letter to the Polish authorities. She begins on page 5  
22 "we would like to briefly address the situation with the  
23 child in Denton, Texas. Unfortunately, this past August,  
24 after they adopted the child, the child was injured under  
25 circumstances that seemed to implicate the father.

1 However, at this point, he has not been formally charged  
2 with a crime and may very well be innocent of all  
3 criminal acts.

4 "He has a clean criminal record and has no  
5 history of violence, has passed a polygraph test  
6 regarding the injuries, and there doesn't seem to be  
7 conclusive evidence even that a crime has been  
8 committed."

9 At a time when this child was using some  
10 kind of colostomy bag.

11 MR. SEARBY: That's correct, your Honor.  
12 The emphasis given that the individual may be innocent,  
13 the individual went to trial later. He was convicted.  
14 There was a defense in the case.

15 So your Honor, we are not here -- we are  
16 here before the Court because there were disclosures that  
17 were made. Obviously, if we could go back in time,  
18 obviously, Ms. Cole would have made those disclosures.

19 We are not here to defend what she has done  
20 but to accept responsibility. We are here to say these  
21 events around this adoption were an aberration and a life  
22 well lived in helping other people.

23 THE COURT: The Government makes an argument  
24 that she engaged in this conduct basically because the  
25 business was failing, and she was extremely concerned

1 that if she got kicked out of Poland by failing to  
2 complete an adoption that she wouldn't be able to keep  
3 the business going.

4 Is there some support for that argument in  
5 the --

6 MR. SEARBY: Your Honor --

7 THE COURT: I was going to point you to  
8 paragraph 89 of the presentence report.

9 MR. SEARBY: Your Honor, what we would say  
10 is the following:

11 If you had heard from our third individual,  
12 Mr. Benderson, I think what he wanted to talk about with  
13 the Court were the strong reasons why he came to believe  
14 after offering money to Ms. Cole to build the EAC, he  
15 came to believe that her primary motive was not  
16 financial; it was the pride in building this agency.

17 So clearly, she was trying to deflect blame  
18 as the Court points out as to the disclosures that put  
19 her before this Court for sentencing today, but I think  
20 the argument from the Government that it was purely a  
21 financial motive is simply putting the worst spin on it  
22 possible. I think the reality, if you looked at the  
23 state of her business, she personally did not profit from  
24 her business in the final years.

25 THE COURT: We have 2016. I am looking at

1 paragraph 89, which you are correct, it looks like after  
2 2016 looks like she has lost money every year except for  
3 2020.

4 MR. SEARBY: She did, your Honor, and she  
5 took -- I believe the number is \$300,000 from an  
6 inheritance and put it in EAC to keep it going. The  
7 reason she did that is summed up in the one picture in  
8 our sentencing memo that shows -- in that picture, it is  
9 more like hundreds -- it would come back to Strongsville  
10 every year in appreciation and celebration of adopting  
11 their children, and she wanted to keep it going.

12 The reality is the Poland program, contrary  
13 to the Government's chart, was a small percentage at that  
14 point of the fees that they were going to get. And as I  
15 understand it from my client, that China and India  
16 programs after the Russia programs closed because Russia  
17 stopped doing international adoptions, not because of any  
18 issue involving EAC but the China and India programs  
19 dwarfed the Poland program. So I don't believe my  
20 client's motive was trying to get rich.

21 In any event, she comes before this Court at  
22 the age of 74 with no prior Criminal History. She lived  
23 70 years of her life without committing an offense for  
24 which she was convicted, and as federal courts  
25 recognized, that says something.

1           She lived a law-abiding life until this  
2 event, and again, she helped so many people. One of the  
3 letters that really resonated with me was the letter  
4 written by Mr. Mack's daughter, who is now a captain and  
5 adopted from Eastern Europe and a captain in the  
6 United States Army stationed as I understand in Korea  
7 pursuing a Masters. She wrote that letter from Korea on  
8 her own initiative to emphasize to the Court where would  
9 she be but for my client's interests on her behalf.

10           So I think the law is clear that you  
11 sentence the whole individual, not simply the crime.

12           THE COURT: So the Sentencing Guidelines, do  
13 those emphasize the nature of the offense,  
14 overemphasizing the background of the offender?

15           MR. SEARBY: Your Honor, the question, it  
16 was a question the Court put to the Government in some  
17 sense, that fraud Guideline puts us in a place that  
18 overemphasizes --

19           THE COURT: What I am inartfully or clumsily  
20 going at, doesn't federal sentencing follow Kahn's  
21 argument that you punish the crime more so than the  
22 offender and does not follow the Bentham argument that  
23 punishment should be more forward looking?

24           MR. SEARBY: Your Honor, I believe with the  
25 3553 factors with the Supreme Court's decision in Booker,



1 we reached a point -- and this Court has substantial  
2 discretion to decide where this goes, in my day, the  
3 Sentencing Guidelines were pretty much where it began and  
4 ended, my days with the Government.

5 But no, I believe we should sentence the  
6 whole individual. We have in this country a problem of  
7 overincarceration. Millions of Americans are behind  
8 bars. And I think the Court mentioned 28 U.S.C. 944.

9 Yes, that statute may have been a directive  
10 from Congress to the Sentencing Commission, not to the  
11 courts, but it was a recognition on the part of Congress  
12 that imposing a sentence of no imprisonment is generally  
13 appropriate where you have an individual that comes  
14 before the Court with no prior Criminal History,  
15 particularly where it is an individual like Ms. Cole who  
16 poses no threat to society going forward.

17 I believe that this Court can fashion a just  
18 punishment through various means at the Court's disposal  
19 that is a better use of resources and doesn't warehouse  
20 another individual behind the bars in the United States  
21 who doesn't need to be there.

22 As we have talked about, I think her health  
23 issues are significant. I think she needs ongoing  
24 medical care. Yes, the federal prison system, I believe  
25 it is Butner, but I may have remembered that wrong, has a

1 medical facility, but I have also had clients and  
2 cooperating witnesses and other individuals over my  
3 career that have gone there, and it is not the medical  
4 care we would want with an individual who actually has  
5 two tumors in her brain, hypertension.

6 The tumors aren't malignant, but she needs  
7 to be followed to make sure that doesn't change. She  
8 suffers from vertigo, suffers from post traumatic stress  
9 disorder, and due to hypertension and her age, she is  
10 vulnerable to COVID.

11 Yes, we have vaccines, but as this Court  
12 knows, vaccines give us protection, but they are not fool  
13 proof. We all know people who have had every vaccine  
14 they could get, who had become very sick from COVID, and  
15 behind bars it is very hard to isolate yourself from  
16 other inmates and to protect yourself from infection.

17 So based on all those factors, we would ask  
18 the Court to fashion an alternative sentence and vary  
19 below the Guidelines.

20 And a reference was made to the fact that  
21 Ms. Longoria received a year and a day. Well,  
22 Ms. Longoria, the starting point for her sentence was a  
23 level 19. Ms. Cole is at a level 14.

24 I disagree with the Government when they say  
25 Ms. Cole is more culpable than Ms. Longoria. I don't

1 believe that that's true. I think that Ms. Longoria and  
2 Ms. Moran had the direct involvement in the program in  
3 Africa. The individual that spoke to the Court today was  
4 talking about Africa. Ms. Cole during this stage was  
5 withdrawing from day-to-day management.

6 And the Government had the opportunity and  
7 certainly the will to charge Ms. Cole with the conduct in  
8 Africa as they did these other defendants, and they  
9 didn't do it. They had years to make the case and even  
10 able to avoid the privilege and read Ms. Cole's  
11 communications with her lawyers, and still they did not  
12 charge her.

13 In fact, they agreed in the plea agreement  
14 not to bring further charges. And as I look at the  
15 conduct here, setting aside the event which happened,  
16 which was not foreseeable to Ms. Cole, was not -- she was  
17 not the proximate cause of the harm to the child and  
18 however horrible, she was not the one responsible for it.

19 The conduct to me that is most troubling are  
20 the allegations in relation to Africa, and I will end  
21 what Poland clients said about her because I think she  
22 said it well. She said, you know, Ms. Cole was a good  
23 person who tried to help her but was a poor manager of  
24 people.

25 THE COURT: Thank you. Is there anything

1 you want to say, Ma'am?

2 THE DEFENDANT: Okay. Thank you, your  
3 Honor, for allowing me to try to explain some of these  
4 and why it would never happen in the future.

5 I would like to start with one Mother's Day  
6 weekend was as horrible as a mother could have. I woke  
7 up to the fact that my baby daughter died in her sleep;  
8 SIDS. Baby Alicia's death was the birth of the EAC. My  
9 passion and goal was to save the lives of children.

10 This grew to 8,000 orphans celebrating  
11 Christmas with their family. I made mistakes wrongfully  
12 helping this Poland family.

13 At the time -- and they keep talking about  
14 48 hours -- at the time, there was no law that said you  
15 have to do within a certain period. How in 2020 there  
16 was a proposed law -- I think the lawyer talked to you  
17 about it -- and now nobody, including myself, would have  
18 been able to do or would want to do what I did, and that  
19 was the help the lady who asked me for help.

20 The rule is now 24 hours. After you suspect  
21 a disruption you report it, central authority, country of  
22 original. So if that law would have been there in those  
23 days, you know, I wouldn't be here. So anyway, the  
24 procedures are different. As far as that medical report,  
25 I know I am not supposed to talk about it, but I just

1 sent that medical report over, the Denton medical report  
2 over to Poland immediately about total worry about kids  
3 being raped in Poland as this little girl was kept in the  
4 cage and raped according to the report and according to  
5 her own testimony, to somebody here.

6 So therefore, the idea I was hiding it from  
7 the Government, I was not hiding. I was reporting to try  
8 to get help for the kids over there. Okay?

9 So I am sorry about that that I didn't get  
10 the words right. I was short on staff. She was right  
11 about the management. All right.

12 Now, I am very -- although I made these  
13 serious mistakes in Poland, I am really very sorry for  
14 what happened, but look at the good I did. I worked 24  
15 years as hard as I could work to save as many orphans as  
16 possible with my little Alicia angel with me. These  
17 children were the joy of my life. My mom worked with the  
18 agency, too, and we called them "our kids."

19 We enjoyed those picnics, and we had a  
20 little sign that said, "have you saved the life of a  
21 child today?"

22 That was a plaque on my wall. Seeing these  
23 children and opening the Holiday cards was an event that  
24 nobody ever gets in a job. It was a wonderful job. I  
25 did not do this for financial gain, except I got a

1 paycheck, but as the lawyer already explained, my last  
2 four years, I basically was a volunteer because my  
3 paycheck was about the same as the \$300,000 that I  
4 donated. I donated that because Russia closed, and we  
5 needed a boost.

6 We were working on this India program, which  
7 was huge and wonderful. Many young children needed  
8 homes, and we recently got a license, so I spent most of  
9 my time on that and stepped away from the other and had  
10 hired Debra Parris who was a great worker for another  
11 agency for 20 years, totally qualified to do the job  
12 according to Gladney & Associates. And she also had  
13 experience in Africa and domestic adoptions, so I  
14 considered it a find because I would not have to worry  
15 about that.

16 Your Honor, I have been in community  
17 confinement since August of 2020. I live in the country  
18 with my Amish neighbors. I eat in restaurants maybe  
19 three times a year. I don't go to malls or crowded  
20 places. I am vaccinated for COVID, but I am very afraid  
21 that I am not resistant to getting diseases at my age. I  
22 have been getting sick and my daughter who is a hospice  
23 nurse has taken me to the hospital twice, November and  
24 February for things, and then they start scanning my  
25 brain and giving me things. So this has been hard on me

1 because of all these problems.

2 So I beg you to please consider a sentence  
3 of some kind of probation or home confinement or whatever  
4 is possible as punishment for this case, so I can help my  
5 family. My son needs help. We recently planted a  
6 garden. He is diabetic and special needs. You know, you  
7 read in the report and the other thing. And so we want  
8 to spend time together and hopefully working on improving  
9 my health and his.

10 So I would like to put this financially and  
11 physically devastating last five years behind me. I  
12 loved the 24 years before that, and I feel very blessed  
13 to have had the opportunity to save 8,000 children.  
14 Every time I think about it, I smile. You have to smile  
15 when you think about those children that you saw at the  
16 picnics.

17 So again, I am very sorry for all the harm I  
18 caused and by my mistakes I made. And this is not a  
19 situation that would ever happen again.

20 As the EAC is closed and no other adoption  
21 agency would make that mistake because of the new laws.

22 Thank you, your Honor.

23 THE COURT: I have set the offense level and  
24 the Criminal History Category. I also consider the 3553  
25 factors. First among those is the nature and

1 circumstances of the offense. The Defendant founded and  
2 ran an adoption consulting agency, which was based in the  
3 Northern District of Ohio, but it conducted international  
4 adoptions, especially those involving Poland and Uganda  
5 during the relevant time periods.

6 The background of the offense was that the  
7 Defendant was involved with making false statements and  
8 facilitating false statements to the Polish adopting  
9 agencies and United States controlling agencies.

10 The Defendant attempted to cover up the  
11 transfer of a child that was brought from Poland and then  
12 suffered sexual abuse at the hands of somebody the child  
13 should never have been placed with.

14 The location that the child was transferred  
15 had never undergone a home inspection, and the Defendant  
16 skirted over this and misrepresented that the child was  
17 going to be housed in Utah.

18 I also consider the Defendant's history and  
19 characteristics. She is 74 years of age, Criminal  
20 History Category I. She doesn't have any past scorable  
21 criminal record. She also does not appear to have any  
22 prior arrests. Those factors work to her benefit.

23 She also had operated this agency for a  
24 large number of years with some success, both to herself  
25 but perhaps more importantly for the number of adoptions



1 that she assisted facilitating. This was a business, and  
2 she made significant amounts of money and charged  
3 significant amounts of money to clients.

4 So in many ways. It was certainly not a  
5 charitable endeavor, but she nonetheless facilitated a  
6 large number of adoptions that were of significant  
7 benefit to the adopted children and to the families that  
8 received these adoptions.

9 She has a number of significant medical  
10 conditions that make her at some risk for adverse medical  
11 issues. She also has some psychological issues, but most  
12 of those seem tied to this case; no issue of substance  
13 abuse. She has a bachelor of science degree.

14 I also consider the need for the sentence to  
15 reflect just punishment, afford adequate deterrence,  
16 protect the public, and reflect the seriousness of the  
17 offense relative.

18 Relative to deterrence I don't think there  
19 is an issue of specific deterrence. I think there is  
20 only a marginal issue of general deterrence. I don't  
21 think the sentence I give in this case will have a  
22 significant deterrent effect one way or the other.

23 I do focus though, there is a need to impose  
24 just punishment. And part of that is retribution for the  
25 harm that was visited upon this poor child by the

1 Defendant's conduct, which would have, if the Defendant  
2 had not engaged in this conduct, it is unlikely that the  
3 child would have suffered the problems that the child has  
4 had.

5 I also need to consider the issue of  
6 disparities, and I have given earlier -- recorded the  
7 number of people incarcerated. The broad majority were  
8 sentenced to a period of incarcerations, and the average  
9 was somewhere in the range of 11 to 12 months.

10 So having considered all these factors, I am  
11 going to sentence the Defendant to three months of  
12 incarceration. I am going to then put the Defendant on  
13 three years of supervised release.

14 As one of the conditions of the supervised  
15 release, I am going to require for the 12 months  
16 following her release from incarceration, I am going to  
17 require that the Defendant be subject to home  
18 confinement.

19 She will be permitted to leave her home  
20 during those 12 months, only to attend medical treatment,  
21 attend religious services, or if she has gotten prior  
22 approval from the supervising probation officer.

23 I will impose a fine of \$7,500, which would  
24 be payable immediately. There will also be the  
25 imposition of \$200 special assessment. Relative to the

1 fine, she will be required to pay that immediately.

2 If not paid immediately, she will be  
3 required to make payments of not less than 10 percent of  
4 her gross monthly income. While she is under supervised  
5 release, she is not to violate any other state, federal,  
6 or local law. She will be subject to the standard  
7 conditions, but she will, given her background, I won't  
8 require that she provide the drug screening that is  
9 typically required of offenders.

10 So that would be the sentence of the Court.

11 Does the United States have any objection?

12 MS. RICE: Your Honor, we do object to the  
13 sentence, and at this time, we also would move to dismiss  
14 Count 12 pursuant to the plea agreement.

15 THE COURT: I will grant the Government's  
16 motion to dismiss that count.

17 Does the defense have any objection?

18 MR. SEARBY: No objection other than those  
19 already stated in regards to the enhancements, your  
20 Honor, and I apologize if things had changed. Does the  
21 Court have the opportunity to recommend designation to  
22 a --

23 THE COURT: I can recommend, but it is not  
24 controlling.

25 MR. SEARBY: And could we have the

1 opportunity to voluntarily report so she can deal with  
2 her medical issues?

3 THE COURT: Well, her medical background  
4 would be part of the PSR that the Bureau of Prisons would  
5 consider, and presumptively, they would take that into  
6 consideration relative to designating her. I am not sure  
7 if Butner takes female prisoners, and the other likely  
8 one -- but I will ask the Bureau of Prisons to take her  
9 health conditions into consideration in making a  
10 designation.

11 MR. SEARBY: Thank you, your Honor.

12 THE COURT: Does the Government have any  
13 objection to allowing her to self-report?

14 MS. RICE: No, your Honor.

15 THE COURT: Okay. The way this will work,  
16 the Bureau of Prisons will give you a designation, a time  
17 and a place to report. You need to follow whatever  
18 direction they give you as to what federal correctional  
19 facilities to report to and what date to do the  
20 reporting.

21 Okay. Unless there is something else, we  
22 will adjourn. So thank you.

23 (Hearing concluded at 12:21 p.m.)

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C E R T I F I C A T E

I, George J. Staiduhar, Official Court  
Reporter in and for the United States District Court,  
for the Northern District of Ohio, Eastern Division,  
do hereby certify that the foregoing is a true  
and correct transcript of the proceedings herein.

s/George J. Staiduhar  
George J. Staiduhar,  
Official Court Reporter

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